

REMARKS

Claim 1-20 remain in the application. Despite many distinctions made of record, the claims have again been rejected based on Shaffer (U.S. 5,960,001) in view of Lee (U.S. 6,611,886), with the rejection of claim 20 relying also on Peterson (U.S. 6,301,262). The final office action (page 2) contends that the applicant's argument is wrong because applicants are attacking the references individually and this is improper to demonstrate non-obviousness.

However, the applicants submit that a rejection under Section 103 requires that the combination provide all of the recited features. Understanding that when there is motivation to do so, such a combination may result in a reconstruction of the prior art to meet the terms of the claimed subject matter. Nonetheless, the references cannot lack the elements recited in the claims.

In this regard, applicants have urged that, with regard to the independent claims 1, 6 and 10, the Shaffer reference does not define a phase in a transmission cycle based on the receive time of the end of a telegram or data packet. The rejection cites Shaffer at col. 4, line 59 – col. 5, line 10). This passage concerns backoff times as though they somehow amount to an equivalent for defining a distinct phase in a transmission cycle based on the receive time of the end of a data packet. After applicants challenged this contention, instead of providing rebuttal to the deficiencies in the prior art Shaffer reference, the rejection only argues that applicants cannot attack the references individually as this is improper to demonstrate non-obviousness.

The Examiner's interpretation based on col. 4 line 59 ff lacks consistency with the definition and application of backoff times (used by Shaffer only in the context of collision avoidance as described at col. 1, lines 20 – 49 and col. 2, lines 25 – 30). The Shaffer reference is not referring to a phase of a transmission cycle during which only isochronous data is transmitted.

The Shaffer reference does not disclose defining “a first phase of a transmission cycle ... characterized by an end time based on a defined receive time of the end of a data telegram of an isochronous phase a having the first priority ...” as set forth in claim 1. Similar distinctions exist in independent claims 6 and 10.

The reasons applicants disagree with the Examiner's inferences is that the citation used for the rejection is taken out of context and incorrectly applied. Again, the Examiner is

requested to consider the explanation at col. 1, lines 30ff which states that the backoff time is a “delay time” (e.g., 51.2 microseconds) prior to sending a data packet for purposes of collision avoidance. Specifically, the reference explains that when a transmission is terminated due to a collision, it is retried after “a selected backoff time” and this indicates a wait time. Further, the citation states that the backoff time is selected as a multiple of the slot time, i.e., a multiple of the maximum round trip time from one end of the network to another end of the network (and back again). The Examiner’s argument must be considered in the context of the Examiner’s full citation. See col. 4, lines 64ff which explains that **during** isochronous data transmission the backoff times, i.e., the delay/wait times, for collision avoidance **are suspended**.

So, it is only in the stated context (col. 4, lines 59-60) wherein an isochronous transmission has just terminated and the network device is attempting to transmit nonisochronous data, that there may be a collision and if there is a collision this then results in provision of another back-off time (delay time) before the nonisochronous data is transmitted. As noted at lines 66-67 of col. 4, *backoff times are suspended during time periods when isochronous data is to be next transmitted*. For these reasons the cited passages do not disclose the claimed invention. The final office action has failed to reply to these points.

In this regard, applicants submit that confusion results regarding the context and meaning of the statement in Shaffer (col. 5, lines 1 – 2) that “the backoff window will be automatically extended to the end of the isochronous transmission ...” but consistency is had by recognizing that the author is only stating that nonisochronous data is not sent while isochronous data is being transmitted; and this statement does not indicate that the end of one isochronous transmission marks the end of a phase reserved for multiple isochronous transmissions. The final office action has failed to reply to this point.

Applicants’ claim 1 requires that the end time for the first **phase** of a transmission cycle (in which data telegrams assigned a first priority are sent) is marked by the end time of the transmission of one of the telegrams having the first priority. In the Shaffer reference, the delay time for collision avoidance (before transmitting nonisochronous) is extended to avoid collision with the isochronous data transmission but there is **no** connection between this function and ending the phase of isochronous data transmission. According to the cited passages in Shaffer, the running of delay times is suspended during transmission of isochronous data. This is not the same as ending a phase of multiple isochronous transmissions by extending a backoff window to

the end of one isochronous transmission. This is what the rejection appears to conclude, but there is no support for this position. The final office action has failed to reply to this point.

Applicants' understanding is consistent with the statement in *Shaffer* (col. 4, lines 59-61) that

"If an isochronous transmission on the bus has just terminated, the network device may wish to transmit nonisochronous data"

because the cited passages do not relate to restricting transmission of isochronous data and nonisochronous data in separate phases reserved for each type of data transmission.

Existence of this feature (*a first phase of a transmission cycle ... characterized by an end time based on a defined receive time of the end of a data telegram of an isochronous phase a having the first priority ...* as set forth in claim 1) and similar features recited in independent claims 6 and 10 **cannot be demonstrated in either the Shaffer reference or the Lee reference.** At best, the prior art refers to a first phase having a pre-defined receive time for receipt of the end of the respective data telegram assigned the first priority at the second user.

It appears that when neither Shaffer nor Lee disclose the subject matter at issue, it cannot be said that this is an issue of obviousness. Rather, a deficiency in the references which are combined results in an inability to construct the invention. The applicants' arguments and remarks related to Shaffer are not simply an argument against that reference individually, but rather, they are made to point out that the teaching of Shaffer presumed by the Examiner is incorrect, and that deficiency is not corrected by the secondary citation to Lee, therefore, no *prima facie* case for obviousness has been established.

Conclusion

Applicants continue to disagree with the rejections presented under Section 103, and the Examiner is requested to fully respond to the deficiencies in the art rejections by withdrawal of the rejections.

Based on the above amendments and the argument presented, the application should be allowed. If the Examiner refuses allowance, then the Examiner is requested to issue an Advisory Action which responds more fully to the above argument than did the final office action, since

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the Applicant seeks a fuller understanding of the Examiner's position prior to preparing another appeal brief.

The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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